

[Filed 9-21-07. Lawsuit petition, and
Application Claiming Contempt]

IN THE IOWA DISTRICT COURT FOR POTTAWATTAMIE COUNTY

STATE OF IOWA, ex rel., IOWA
DEPARTMENT OF NATURAL
RESOURCES (99AG23542),

Plaintiff,

vs.

CLIFFORD YENTES and THE
CLIFFORD YENTES TRUST,

Defendants.

LAW NO. CV CV 095 669

PETITION AT LAW

COMES NOW Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources
(hereafter "DNR"), and for its claim against Defendants Clifford Yentes and The Clifford Yentes
Trust states as follows:

Introduction

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Defendants Clifford Yentes and The Clifford Yentes Trust, arising from violations of Iowa solid waste and underground storage tank laws on properties located within the City of Council Bluffs in Pottawattamie County, Iowa. The violations involve the illegal disposal of solid waste, including, but not limited to, waste tires, appliances, furniture, shingles, insulation, railroad ties, and various construction and demolition waste. The violations further involve the failure to comply with requirements relating to underground storage tank upgrade, notification, registration tag and annual management fee, closure, and financial responsibility.

Parties

2. The State of Iowa is a sovereign state of the United States of America.
3. The DNR is a duly constituted agency of the State of Iowa pursuant to Iowa Code section 455A.2.
4. Defendant Clifford Yentes is a Nebraska resident who resides at 5516 N. 76th Street, Omaha, Nebraska. Defendant Clifford Yentes is the Trustee of The Clifford Yentes Trust.
5. Defendant The Clifford Yentes Trust is the owner of two properties in Pottawattamie County, Iowa. The first is located at 1320 Avenue J, Council Bluffs, Iowa (hereafter "the Avenue J site"), and legally described as follows: Pott-Cobbs First Addition, Lots 11-16, Block 5, within the corporate limits of the City of Council Bluffs, Pottawattamie County, Iowa. The second property is located at 19544 Monument Road, Council Bluffs, Iowa (hereafter "the Monument Road site"), and consists of 8.5 acres located in Section Thirteen (13), Lake Township, Township Seventy-five (75) North, Range Forty-four (44) West of the 5th P.M., Pottawattamie County, Iowa.

Jurisdiction

Solid Waste Regulations

6. Under Iowa Code section 455B.304, the Environmental Protection Commission of the DNR is required to establish rules for the proper administration of Iowa Code chapter 455B, Division IV, Part 1, relative to the treatment and disposition of solid waste. Pursuant thereto, the Commission has adopted 567 Iowa Admin. Code chapters 100-119 concerning solid waste management and disposal.

7. Iowa Code section 455B.307(1) and 567 Iowa Admin. Code 100.4 prohibit dumping or depositing or permitting dumping or depositing of solid waste at any place other than a facility permitted by the DNR, unless otherwise permitted by rule.

8. The Attorney General is authorized under Iowa Code section 455B.307(2), on request of the DNR, to institute any legal proceedings necessary in obtaining compliance with an order of the director or prosecuting any person for a violation, of Iowa Code chapter 455B, Division IV, Part 1, or the rules issued under that part. Under Iowa Code section 455B.307(3), any person who violates any provision of Iowa Code chapter 455B, Division IV, Part 1, or any rule or any order adopted pursuant to that part is subject to a civil penalty for each day of violation not to exceed Five Thousand Dollars (\$5,000.00) for each day of violation.

Underground Storage Tank Regulations

9. The DNR is authorized to regulate underground storage tanks (“USTs”) containing regulated substances, including petroleum products, and to adopt rules relating to detection, prevention and correction of releases of regulated substances from such tanks. Iowa Code §§ 455B.471-479.

10. The EPC is authorized to adopt rules related to release detection and prevention, financial responsibility, tank closure, site assessment, risk classification, and corrective action applicable to all owners and operators of USTs. Iowa Code § 455B.474. The UST rules adopted by the EPC are contained in 567 Iowa Admin. Code chapters 133, 135 and 136.

11. An “owner” of a UST is a person who owns the UST used for storage, use, or dispensing of petroleum products. *See* Iowa Code § 455B.471(6)“a”(1), 567 Iowa Admin. Code 135.2.

12. An "operator" of a UST is a person in control of, or having responsibility for, the daily operation of the UST. Iowa Code § 455B.471(5), 567 Iowa Admin. Code 135.2.

13. Not later than December 22, 1998, all existing UST systems must comply with either: 1) the new UST system performance standards under 567 Iowa Admin. Code 135.3(1); 2) the upgrading requirements in 567 Iowa Admin. Code 135.3(2)"b"- "d"; or, 3) the closure requirements under 567 Iowa Admin. Code 135.15, including applicable requirements for corrective action under 567 Iowa Admin. Code 135.7 through 135.12. 567 Iowa Admin. Code 135.3(2).

14. The owner of a UST existing on or before July 1, 1985, shall complete and submit to the DNR a copy of the notification form provided by the DNR by May 1, 1986. 567 Iowa Admin. Code 135.3(3)"a".

15. Owners or operators of USTs are required to comply with the registration tag and annual management fee requirements set forth in 567 Iowa Admin. Code 135.3(5). 567 Iowa Admin. Code 135.3(5).

16. When a UST system is temporarily closed for more than 12 months, owners and operators must return the tank tags and permanently close the UST system if it does not meet either the performance standards in 567 Iowa Admin. Code 135.3(1) for new UST systems or the upgrading requirements in 567 Iowa Admin. Code 135.3(2), except that the spill and overflow equipment requirements do not have to be met. 567 Iowa Admin. Code 135.15(1)"c". Owners and operators must permanently close the substandard UST systems at the end of this 12-month period in accordance with 567 Iowa Admin. Code 135.15(2) to 567 Iowa Admin. Code 135.15(5), unless the DNR provides an extension of the 12-month period. Id. Owners and

operators must complete a site assessment in accordance with 567 Iowa Admin. Code 135.15(3) before such an extension can be applied for. Id.

17. Owners or operators of petroleum USTs must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs in at least the pre-occurrence and annual aggregate amounts set forth in 567 Iowa Admin. Code 136.4(1) and (2). 567 Iowa Admin. Code 136.4(1), (2).

18. A person who violates a provision of Iowa Code chapter 455B, Division IV, part 8, or rule or order issued thereunder is subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for each day during which the violation continue. Iowa Code § 455B.477(1).

19. The Attorney General, at the request of the DNR director with approval of the EPC, shall institute any legal proceedings, including an action for injunction, necessary to enforce the penalty provisions of Iowa Code chapter 455B, Division IV, part 8, or to obtain compliance with the provisions of said part or the rules or orders issued thereunder. Iowa Code § 455B.477(3).

Facts

20. On November 15, 1978, the Iowa Department of Environmental Quality ("IDEQ") (a predecessor agency of the DNR), in response to observations of illegal disposal and open burning of solid waste on property owned by Richard C. Hargis in Pottawattamie County, issued Order No. 78-LQ-08 to Defendant Clifford Yentes, d/b/a Yentes Excavation Co. The order required, *inter alia*, that all solid waste on the property described in the order be removed to a sanitary disposal project permitted by the IDEQ, or properly disposed of on the property subject

to conditions specified in the order. A copy of IDEQ Order No. 78-LQ-08 is attached hereto as Exhibit A, and by this reference incorporated herein.

21. On December 20, 1985, the Iowa Department of Water, Air and Waste Management ("IDWAWM") (a predecessor agency of the DNR), issued Administrative Order No. 85-LQ-09 to Defendant Clifford Yentes in response to observations of illegal disposal of solid waste at the Monument Road site described in paragraph 5, above. The order required, *inter alia*, that Defendant Clifford Yentes cease disposal or permitting disposal of all solid waste except rubble and waste resulting from his own activities, and remove the waste from the property subject to conditions specified in the order. A copy of IDWAWM Administrative Order No. 85-LQ-09 is attached hereto as Exhibit B, and by this reference incorporated herein.

22. Following further acts of open dumping of solid waste by Defendant Clifford Yentes, this Court on October 20, 1994 entered Consent Order, Judgment and Decree in State of Iowa, ex rel., Iowa Department of Natural Resources v. Clifford Yentes, Pottawattamie Co. Law No. 64523. Pursuant to the decree, Defendant Clifford Yentes was ordered to pay a civil penalty of Five Thousand Dollars (\$5,000.00) for the violations alleged in the Petition, and enjoined from further violations of Iowa Code section 455B.307(1), 567 Iowa Admin. Code 101.3 (now 567 Iowa Admin. Code 100.4), and Administrative Order Nos. 78-LQ-08 and 85-LQ-09. A copy of the Consent Order, Judgment and Decree is attached hereto as Exhibit C, and by this reference incorporated herein. Following entry of the decree, the Court issued a Writ of Injunction on December 9, 1994, enjoining Defendant Clifford Yentes from further violations of Iowa Code section 455B.307(1), 567 Iowa Admin. Code 101.3 (now 567 Iowa Admin. Code 100.4), and Administrative Order Nos. 78-LQ-08 and 85-LQ-09. A copy of the Writ of Injunction is

attached hereto as Exhibit D, and by this reference incorporated herein. Defendant has failed to pay the civil penalty of Five Thousand Dollars (\$5,000.00) assessed pursuant to the Consent Order, Judgment and Decree entered by this Court in State of Iowa, ex rel., Iowa Department of Natural Resources v. Clifford Yentes, Pottawattamie Co. Law No. 64523.

23. On October 13, 2006, DNR officials received a complaint alleging improper disposal of solid waste at the Monument Road site. In response, DNR officials inspected the site on November 3, 2006, and observed a six-story high pile of solid waste consisting of rubble and miscellaneous solid waste. In addition, other solid waste disposal locations were observed at the site. The solid waste observed at the site included waste tires, appliances, furniture, shingles, insulation, railroad ties, and various construction and demolition waste. Following the inspection, DNR officials sent Defendant Clifford Yentes a Notice of Violation on November 8, 2006.

24. On November 16, 2006, DNR officials met with Defendant Clifford Yentes at the Monument Road site. In the course of their meeting, DNR officials observed a City of Council Bluffs dump truck arrive and dump solid waste at the site. Defendant Clifford Yentes acknowledged at that time that he receives payment to allow parties to dump at the site. Mr. Yentes further claimed to be unaware of the prior enforcement actions against him. DNR officials advised Mr. Yentes during the meeting not to dump solid waste at the site and that dumping was illegal. DNR officials sent Mr. Yentes copies of the prior orders on November 17, 2006.

25. On November 26, 2006, DNR officials again met with Defendant Clifford Yentes at the Monument Road site. During the course of their meeting, DNR officials observed that

additional solid waste had been dumped at the site since November 16, 2006. DNR officials advised Mr. Yentes during the meeting not to dump solid waste at the site and that dumping was illegal.

26. On December 4, 2006, Defendant Clifford Yentes met with DNR officials at DNR Field Office #4 in Atlantic, Iowa. In the course of this meeting, Mr. Yentes requested permission to continue to allow the dumping of rubble at the Monument Road site. In response, DNR officials informed Mr. Yentes that dirt, stone, brick or similar inorganic material could only be used for fill, landscaping, excavation or grading and could not simply be piled on the property for a fee.

27. On December 12, 2006, DNR officials conducted an inspection of the Avenue J site. In the course of this inspection, DNR officials observed garbage scattered throughout the property, lead acid batteries on the ground, uncovered buckets of waste oil, scattered junk metal and equipment, and what appeared to be an abandoned UST.

28. On December 18, 2006, DNR officials sent Defendant Clifford Yentes a letter instructing him to cease dumping or allowing the dumping of materials at the Monument Road site, and to remove all solid waste, including rubble, from the site.

29. On February 8, 2007, DNR officials inspected the Avenue J site and noted an active UST that has never been registered with the DNR. DNR officials further noted that the UST has not been upgraded to meet current regulatory requirements. In response, DNR officials sent Defendant Clifford Yentes a Notice of Violation on February 16, 2007.

Violations

30. Defendants have violated Iowa Code section 455B.307(1), 567 Iowa Admin. Code 100.4, IDEQ Order No. 78-LQ-08, and IDWAWM Administrative Order No. 85-LQ-09 by dumping or depositing or permitting the dumping or depositing of solid waste on the properties described in paragraph five (5) above, and by failing to remove and properly dispose of solid waste from the properties described in paragraph five (5), above.

31. Defendants have violated 567 Iowa Admin. Code 135.3(2) by failing to comply by December 22, 1998, with either: 1) the new UST system performance standards under 567 Iowa Admin. Code 135.3(1); 2) the upgrading requirements in 567 Iowa Admin. Code 135.3(2)“b”-“d”; or, 3) the closure requirements under 567 Iowa Admin. Code 135.15, including applicable requirements for corrective action under 567 Iowa Admin. Code 135.7 through 135.12.

32. Defendants have violated 567 Iowa Admin. Code 135.3(3)“a” by failing to complete and submit to the DNR by May 1, 1986, a copy of the notification form required for USTs existing on or before July 1, 1985.

33. Defendants have violated 567 Iowa Admin. Code 135.3(5) by failing to comply with the registration tag and annual management fee requirements set forth therein.

34. Defendants have violated 567 Iowa Admin. Code 135.15(1)“c” by failing to permanently close a substandard UST they own or operate which does not meet either the performance standards in 567 Iowa Admin. Code 135.3(1) for new UST systems or the upgrading requirements in 567 Iowa Admin. Code 135.3(2).

35. Defendants have violated 567 Iowa Admin. Code 136.4(1) and (2) by failing to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs in at least the pre-occurrence and annual aggregate amounts set forth in 567 Iowa Admin. Code 136.4(1) and (2).

WHEREFORE, plaintiff requests that the Court:

- a. assess civil penalties against defendants not to exceed the statutory maximum pursuant to Iowa Code section 455B.307(3) for each day of violation of Iowa Code section 455B.307(1), 567 Iowa Admin. Code 100.4, IDEQ Order No. 78-LQ-08, and IDWAWM Administrative Order No. 85-LQ-09;
- b. assess civil penalties against defendants not to exceed the statutory maximum pursuant to Iowa Code section 455B.477(1) for each day of violation of 567 Iowa Admin. Code 135.3(2), 135.3(3)"a," 135.3(5), 135.15(1)"c," 136.4(1) and 136.4(2);
- c. issue a permanent injunction pursuant to Iowa Code section 455B.307(2) enjoining defendants from further violations of the provisions of Iowa Code section 455B.307(1), 567 Iowa Admin. Code 100.4, IDEQ Order No. 78-LQ-08, and IDWAWM Administrative Order No. 85-LQ-09; and
- d. issue a permanent injunction pursuant to Iowa Code section 455B.477(3) enjoining defendants from further violations of the provisions of 567 Iowa Admin. Code 135.3(2), 135.3(3)"a," 135.3(5), 135.15(1)"c," 136.4(1) and 136.4(2).

Plaintiff further requests that the Court tax the costs of this action to defendants and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

DAVID R. SHERIDAN
Assistant Attorney General

A handwritten signature in black ink, appearing to read "David L. Dorff", is written over a horizontal line.

DAVID L. DORFF, AT0002110
Assistant Attorney General
Environmental Law Division
Lucas State Office Building
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Des Moines, Iowa 50319
Phone: (515) 281-5351
Fax: (515) 242-6072
E-mail: ddorff@ag.state.ia.us
ATTORNEYS FOR PLAINTIFF

DEPARTMENT OF ENVIRONMENTAL QUALITY

ORDER OF THE EXECUTIVE DIRECTOR

IN THE MATTER OF:)
CLIFFORD YENTES) ORDER NO. 78-LQ-08
d/b/a YENTES EXCAVATION CO.)

TO: Clifford Yentes
1320 Avenue J.
Council Bluffs, IA 51501

Pursuant to Subsection 455B.82(2), Code of Iowa, 1977, you are hereby notified that the Executive Director of the Department of Environmental Quality has evidence that Clifford Yentes d/b/a Yentes Excavation Company has deposited solid waste resulting from its operations on real property owned by Richard C. Hargis in the NW 1/4 of Sec 5 T74 R43 Pottawattamie County; that said solid waste began burning on or about October 4, 1978; that said burning is in violation of Rule 400--4.2(455B) Iowa Administrative Code and Subsection 455B.82(1), Code of Iowa, 1977; that said burning has created a nuisance in violation of Subrule 400--26.2(2) Iowa Administrative Code; that because of said burning and failure to cover the solid waste an open dump exists on the above-described property in violation of Rule 400-26.6(455B) Iowa Administrative Code; and that therefore Clifford Yentes has violated and is presently in violation of Chapter 455B of the Code of Iowa and the Rules of the Department of Environmental Quality.

You are further notified that the Executive Director of the Department of Environmental Quality has evidence that Clifford Yentes d/b/a Yentes Excavation Company has deposited solid waste resulting from its operations on real property owned by Kane-Miller Corporation and occupied by Great Plains Beef Company, Inc., Sec 3 T74 R44 Pottawattamie County; that said waste has not been covered in violation

of Subrule 400--26.2(1) Iowa Administrative Code; that the depositing of said waste has created an open dump on said property in violation of Rule 400--26.6(455B) Iowa Administrative Code, and that therefore Clifford Yentes has violated and is presently in violation of Chapter 455B of the Code of Iowa and Rules of the Department of Environmental Quality.

THEREFORE, you are hereby ordered to comply with the following provisions in order to bring the above-described property into compliance with Chapter 455B of the Code of Iowa and the Rules of the Department of Environmental Quality:

1. All solid waste generated by Clifford Yentes d/b/a/ Yentes Excavation Company shall be either

- a. Disposed at a sanitary disposal project permitted by the Department of Environmental Quality or
- b. Disposed outside the State of Iowa or
- c. disposed on land owned or leased by Clifford Yentes provided that such waste is generated on property owned or leased by Clifford Yentes, that such disposal is not by open dumping, that it creates no public health hazard, nuisance or degradation of surface water or aquifers that are in actual or deemed to be of potential use as a water resource, and that it does not violate any rule of the Air Quality Commission or Water Quality Commission.

2. All solid waste presently deposited on the above-described properties shall either be removed to a sanitary disposal project permitted by the Department of Environmental Quality or properly disposed on the property. If the solid waste is disposed on the property, it shall be disposed according to the following provisions:

- a. The disposal of solid waste by open burning is prohibited.
- b. All solid waste shall be permanently covered with earth, and all extruding refuse shall be removed.

c. The site shall be graded to promote runoff without erosion. Diversion drainage shall be provided as necessary to prevent surface water from entering the filled area.

d. The finished surface of the filled area shall be seeded with grasses or other plants which will provide thorough cover and prevent exposure of the waste through erosion of the cover material.

3. This Order is effective upon receipt. The above provisions shall be completed within 30 days of receipt.

Dated this 14th of November, 1978, at Des Moines, Iowa.

Larry E. Crane
Larry E. Crane, Executive Director

BEFORE THE DEPARTMENT OF WATER, AIR AND WASTE
MANAGEMENT

DES MOINES, IOWA

IN THE MATTER OF:

Mr. Clifford Yentes

ADMINISTRATIVE ORDER

No. 85-LQ-09

RECEIVED

To: Mr. Clifford Yentes
1320 Avenue J.
Council Bluffs, IA 51501

DEPT. OF WATER, AIR AND WASTE

DEPT. OF WATER, AIR AND WASTE

Pursuant to Iowa Code section 455B.307(2) (1985), you are hereby notified that the Executive Director of the Department of Water, Air and Waste Management has determined that:

1. Mr. Clifford Yentes is the owner of real property legally described as Part of Government Lot 1, SW, NW, Sec. 13, R75N, T44W, Part of Government Lot 2, NW, SW, commencing inter. county road, N, of a line SE, SW, NW, then W 206', S261', W292', S407', SE 257', E to county road, northerly along road to point of beginning, Lake Township, Iowa. This parcel of property is approximately 8.5 acres in area.

2. On April 2, 1985, the Department, in response to a complaint, conducted an inspection of the above described property. During this inspection an open dump was observed which contained construction and demolition waste, household wastes such as bathtubs,

upholstery and mattresses and other solid waste including automobile tires and rims and empty fuel storage tanks. The area of the dump site is approximately 2.5 acres.

3. The solid waste described above in paragraph 2. was not solid waste resulting from Mr. Yente's own residential, farming, manufacturing, mining or commercial activities and does not constitute "rubble" as defined in the Department's rules.

4. On July 26, 1985 and October 14, 1985 the Department observed the open dumping of wastes similar to those described in paragraph 2 on the property owned by Mr. Yentes property described above.

5. The activities described above violate Iowa Code section 455B.307(1985) which prohibits the disposal of solid waste at any place other than a permitted sanitary disposal project except for the disposal of that waste resulting from the residential, farming, manufacturing, mining or commercial activities of the owner of the real property upon which the waste is disposed of. [The waste generated as a result of Mr. Yente's activities such as demolition or renovation of buildings not owned by him or as the result of salvage operations do not constitute waste generated as a result of the Yente's activities.

The activities described above also violates subrule 900--101.3(1) Iowa Administrative Code (IAC) which prohibits open dumping except for rubble.

THEREFORE, Mr. Clifford Yentes is hereby ordered to immediately do the following:

1. Cease disposal or permitting disposal of all solid waste except rubble and waste resulting from your own activities.

2. The disposal of solid waste by open burning is prohibited.

3. Remove all solid waste from the above described property except rubble and solid waste generated as a result of your own commercial, residential or industrial activities unless the option allowed in paragraph 5 below is chosen.

4. Following the removal described in paragraph 3., the following measures must also be taken:

- a. Access to the dump site shall be controlled as necessary to prevent further open dumping. Any gates shall be kept locked.

- b. Effective means shall be taken to eliminate flies, rodents or vermin.

- c. Extruding refuse shall be removed, and taken to an approved landfill. The surface shall be permanently covered with earth.

d. The dump shall be graded to promote runoff without erosion. Diversion drainage shall be provided as necessary to prevent surface water from entering the filled area.

e. The finished surface of the filled area shall be seeded with grasses or other suitable vegetation immediately upon completion or promptly in the spring.

f. The restored area shall be periodically cleaned as needed to prevent it from reverting to an open dump.

g. Work shall be completed by March 30, 1986.

5. As an alternative to the requirements of paragraphs 3 and 4 above, obtain a solid waste disposal project permit in conformance with the requirements of Chapters 102 and 103 of the Department's rules. A complete permit application shall be submitted by February 28, 1986. All other provisions of this order shall continue to apply.

PENALTY

6. Pursuant to Iowa Code section 455B.104(1985) the Water, Air and Waste Management Commission is authorized to establish, by rule, a schedule of civil penalties which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties; Chapter 900--10 of the Iowa Administrative Code.

7. A penalty of \$500 is hereby assessed in accordance with Chapter 900--10 (IAC) and shall be paid to the Department within 60 days of receipt of this Order.

8. This penalty is based upon the one day of documented violation which was observed on October 14, 1985, following the effective date of the rules adopted by the Department pertaining to the assessment of administrative penalties.

9. In addition, the Iowa legislature has authorized the assessment of a civil penalty not to exceed \$500 per day per violation of any order, permit or rule of the Department, pursuant to Iowa Code section 455B.307(3)(1985).

10. The administrative penalty assessed herein is computed as follows:

Gravity of the Violation - The Department estimates the area of this dump site to exceed 2 acres and to closely resemble the size and contain the volumes of waste found in a permitted sanitary disposal project. Because of the amount and types of waste disposed of at this site and the manner of disposal used, leachate will be generated. Therefore, this site constitutes a potentially significant environmental threat and warrants a penalty of \$300.

Culpability - The Department has, on numerous

occassions, informed Mr. Yentes of the requirements of this agency. Mr. Yentes has deliberately ignored these requirements. This action warrants a penalty of \$100.

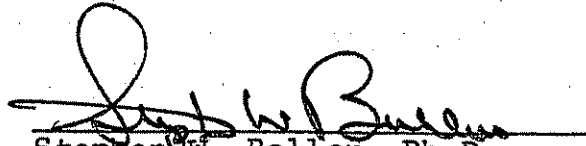
Economic Benefit - Mr. Yentes has enjoyed substantial economic gain by operating a sanitary disposal project without satisfying the accompanying cover, monitoring, and engineering requirements. For this reason an additional \$100 penalty is assessed.

In accordance with the provisions of Iowa Code section 455B.308 (1985), you may appeal this order by filing a written notice of appeal with the Executive Director within 30 days. Upon appeal the Water, Air and Waste Management retains the authority to modify the penalty assessed herein, including the authority to request that the Attorney General institute an action to seek civil penalties pursuant to Iowa Code section 455B.307(3)(1985). The Commission also has the authority to refer this matter to the Attorney General to enforce the provisions of this order if you do not appeal and fail to comply.

Any questions regarding this order should be directed to:

Mark Landa
Legal Services Division
Iowa Dept. of Water, Air & Waste Mgmt.
Henry A. Wallace Bldg.
900 E. Grand Ave.
Des Moines, IA 50319
515/281-6243

Dated this 20th day of December, 1985.


Stephen W. Ballou, Ph.D.
Executive Director

IN THE IOWA DISTRICT COURT FOR POTTAWATTAMIE COUNTY

STATE OF IOWA, ex. rel.,
IOWA DEPARTMENT OF
NATURAL RESOURCES, 99AG23542

Plaintiff,

vs.

CLIFFORD YENTES,

Defendant.

Law No. 64523

CONSENT ORDER, JUDGMENT
AND DECREE

FILED
94 OCT 20 PM 1:44
CLERK DISTRICT COURT
POTTAWATTAMIE COUNTY
IOWA

NOW on this 20th day of October, 1994, the Court is presented with the Plaintiff's Petition at Law seeking civil penalties and injunctive relief pursuant to Iowa Code § 455B.307. The Court having read the petition and being otherwise advised by the parties FINDS:

1. The Court has jurisdiction of the parties and the subject matter of this action and the undersigned parties consent to the entry of this Consent Order, Judgment and Decree.

2. Defendant Clifford Yentes admits, only as between these parties and to achieve this settlement, the violations alleged in the Petition at Law.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Defendant Clifford Yentes shall pay a civil penalty of five thousand and no/100 dollars (\$5,000.00) for the violations alleged in the Petition at Law. Defendant shall pay five hundred and no/100 dollars (\$500.00) within 10 days of the entry of this Consent Order, Judgment and Decree, and two hundred and no/100 dollars (\$200.00) by the first of each month, commencing November 1, 1994.

Copy M. Winter, T. Benton

EXHIBIT C

The defendant shall also pay interest at the annual rate of ten percent (10%) on any unpaid balance. There shall be no interest if defendant makes timely payments. Payments of the civil penalty and any interest shall be made to the Clerk of the Iowa District Court for Pottawattamie County.

2. The Clerk of the Iowa District Court, for Pottawattamie County shall issue and cause to be served upon Defendant Clifford Yentes a permanent writ of injunction without bond enjoining him from further violations of Iowa Code § 455B.307(1), 567 IAC § 101.3 and Administrative Order Nos. 78-LQ-08 and 85-LQ-09.

3. The Court retains jurisdiction of this matter to ensure compliance with the terms of this order.

4. The costs of this action including service fees for the injunction are taxed to Defendant Clifford Yentes in the amount of \$75.00.

Glen W. McKee
JUDGE, Fourth Judicial District of Iowa

IOWA DEPARTMENT OF NATURAL
RESOURCES

Larry J. Wilson
LARRY J. WILSON, Director

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Attorney General of Iowa

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DEFENDANT

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MICHAEL J. WINTER
Historic Seminary Building
541 Sixth Avenue
Council Bluffs, Iowa 51503
Tel: (712) 322-0133
ATTORNEY FOR DEFENDANT

WRIT OF INJUNCTION

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RECEIVED

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STATE OF IOWA, EX REL, IOWA DEPT.
OF NATURAL RESOURCES, 99AG23542

CASE #64523

SHERIFF'S OFFICE
DOUGLAS CO. NEBR

VS
Petitioner

IN THE DISTRICT COURT,
POTTAWATTAMIE COUNTY
STATE OF IOWA

CLIFFORD YENTES

Respondent

To: CLIFFORD YENTES, the DEFENDANT.

WHEREAS, STATE OF IOWA, EX REL IOWA DEPT OF NATURAL RESOURCE, the PLAINTIFF, has filed a petition in the District Court of said county, praying, among other things, that you be restrained from doing and performing certain acts hereinafter specified.

AND WHEREAS, the said injunction has been ordered and allowed by the Honorable GLEN M MCGEE, Judge of the District Court, Fourth Judicial District of Iowa, on the filing of bond in the sum of **WITHOUT BOND** Dollars, which has been done.

Now, these are, in the name of the State of Iowa, to command you and each of you, the said CLIFFORD YENTES

To Restrain From:

FURTHER VIOLATIONS OF IOWA CODE SECTION 455B.307(1), 567 IAC SECTION 102.3

AND ADMINISTRATIVE ORDER NOS. 78-LQ-08 AND 85-LQ-09.

And this injunction you will observe under the penalty of the law.

WITNESS my hand and the seal of said District Court, Council Bluffs, in said County and State, this 20TH day of OCTOBER, 1994.

Rudy G. Sears
Clerk of Court/Designee

FILED
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CLERK DISTRICT COURT
POTTAWATTAMIE COUNTY
IOWA

AFFIDAVIT FOR SERVICE

STATE OF NEBRASKA)

) SS

COUNTY OF DOUGLAS)

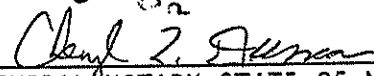
INDEX: 935727

I, THE UNDERSIGNED, BEING FIRST DULY SWORN, ON OATH DEPOSE AND STATE THAT I AM OVER THE AGE OF 18 YEARS, AND A RESIDENT AND A DESIGNATED AGENT OF THE SHERIFF OF DOUGLAS COUNTY, NEBRASKA

RECEIVED THIS WRIT ON NOVEMBER 14, 1994, AND SERVED THE SAME ON NOVEMBER 23, 1994, ON THE WITHIN NAMED, CLIFFORD YENTES BY DELIVERING TO HIM/HER PERSONALLY AT CORNER OF 19TH AND HARNEY STREET IN DOUGLAS COUNTY, NEBRASKA, AT 6:40 A.M., A TRUE AND DULY CERTIFIED COPY OF THIS WRIT WITH ALL THE ENDORSEMENTS THEREON, FILED IN THIS CASE.

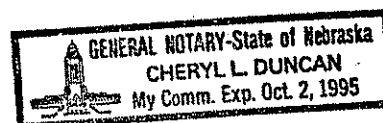

PHILIP WOODWARD
DESIGNATED AGENT OF THE SHERIFF

SUBSCRIBED TO AND SWORN BEFORE ME ON NOVEMBER 23, 1994


GENERAL NOTARY-STATE OF NEBRASKA

FEES \$ 25.00 PAID

TOTAL \$ 25.00 PAID



RECEIVED
CLERK DISTRICT COURT
POTTAWAMIE COUNTY
IOWA

IN THE IOWA DISTRICT COURT FOR POTTAWATTAMIE COUNTY

Defendant.

**APPLICATION CLAIMING
CONTEMPT FOR VIOLATING
COURT ORDER**

3. Paragraph 2 of the Order portion of the Consent Order, Judgment and Decree provides that “[t]he Clerk of the Iowa District Court for Pottawattamie County shall issue and cause to be served upon Defendant Clifford Yentes a permanent writ of injunction without bond enjoining him from further violations of Iowa Code § 455B.307(1), 567 IAC § 101.3 and Administrative Order Nos. 78-LQ-08 and 85-LQ-09.” Pursuant thereto, the Clerk issued a Writ of Injunction on October 20, 1994, which was served on Defendant Clifford Yentes by the Douglas County,

Nebraska Sheriff's Department on November 23, 1994. A copy of the Writ of Injunction is attached hereto as Exhibit B, and by this reference incorporated herein.

4. Paragraph 1 of the Order portion of the Consent Order, Judgment and Decree provides that "Defendant Clifford Yentes shall pay a civil penalty of five thousand and no/100 dollars (\$5,000.00) for the violations alleged in the Petition at Law. Defendant shall pay five hundred and no/100 dollars (\$500.00) within 10 days of the entry of this Consent Order, Judgment and Decree, and two hundred and no/100 dollars (\$200.00) by the first of each month, commencing November 1, 1994." Defendant has failed to pay any portion of the penalty assessed by the Court.

5. Paragraph 3 of the Order portion of the Consent Order, Judgment and Decree provides that "[t]he Court retains jurisdiction of this matter to ensure compliance with the terms of this Order."

6. On November 3, 2006, Iowa Department of Natural Resources Environmental Specialist Matt Rhodes inspected property located at 19544 Monument Road, Council Bluffs, Iowa, and consisting of 8.5 acres located in Section Thirteen (13), Lake Township, Township Seventy-five (75) North, Range Forty-four (44) West of the 5th P.M., Pottawattamie County, Iowa. The property is owned by The Clifford Yentes Trust, of which Defendant Clifford Yentes is the Trustee. In the course of his inspection, Mr. Rhodes observed a six-story high pile of solid waste consisting of rubble and miscellaneous solid waste. In addition, other solid waste was observed at the site, including waste tires, appliances, furniture, shingles, insulation, railroad ties and various construction and demolition materials. Following the inspection, Mr. Rhodes sent Defendant Clifford Yentes a Notice of Violation letter on November 8, 2006, instructing him to

remove all-visible solid waste materials on the ground surface and dispose of it either at an approved sanitary disposal project or recycling center and submit documentation of such disposal to the DNR Field Office in Atlantic, Iowa, by January 1, 2007.

7. On November 16, 2006, DNR officials met with Defendant Clifford Yentes at the Monument Road site. In the course of their meeting, DNR officials observed a City of Council Bluffs dump truck arrive and dump solid waste at the site. Defendant Clifford Yentes acknowledged at that time that he receives payment to allow parties to dump at the site. Mr. Yentes further claimed to be unaware of the prior enforcement actions against him. DNR officials advised Mr. Yentes during the meeting not to dump solid waste at the site and that dumping was illegal. Following the meeting, DNR officials sent Mr. Yentes copies of the prior orders on November 17, 2006.

8. On November 26, 2006, DNR officials again met with Defendant Clifford Yentes at the Monument Road site. During the course of their meeting, DNR officials observed that additional solid waste had been dumped at the site since November 16, 2006. DNR officials advised Mr. Yentes during the meeting not to dump solid waste at the site and that dumping was illegal.

9. On December 4, 2006, Defendant Clifford Yentes met with DNR officials at DNR Field Office #4 in Atlantic, Iowa. In the course of this meeting, Mr. Yentes requested permission to continue to allow the dumping of rubble at the Monument Road site. In response, DNR officials informed Mr. Yentes that dirt, stone, brick or similar inorganic material could only be used for fill, landscaping, excavation or grading and could not simply be piled on the property for a fee.

10.. On December 18, 2006, DNR officials sent Defendant Clifford Yentes a letter instructing him to cease dumping or allowing the dumping of materials at the Monument Road site, and to remove all solid waste, including rubble, from the site.

11. As of August 30, 2007, no documentation verifying removal and proper disposal of solid waste from the Monument Road site in Council Bluffs has been received from defendant, and defendant has failed to remove and dispose of all visible solid waste materials on the ground surface at either an approved sanitary disposal project or recycling center.

12. Defendant Clifford Yentes has willfully failed to comply with the Writ of Injunction issued on October 20, 1994, and served on him by the Douglas County, Nebraska Sheriff's Department on November 23, 1994.

WHEREFORE, Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources requests that the Court enter an order requiring Defendant Clifford Yentes to appear and show cause why he should not be held in contempt for violation of the Writ of Injunction issued on October 20, 1994. Plaintiffs further request that the hearing be held forthwith and that defendant thereupon be ordered to comply with the Writ of Injunction, and that he be punished for contempt as provided by Iowa Code chapter 665.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

DAVID R. SHERIDAN
Assistant Attorney General



DAVID L. DORFF, AT0002110

Assistant Attorney General
Environmental Law Division
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E-mail: ddorff@ag.state.ia.us
ATTORNEYS FOR PLAINTIFFS

IN THE IOWA DISTRICT COURT FOR POTTAWATTAMIE COUNTY

STATE OF IOWA, ex. rel.,
IOWA DEPARTMENT OF
NATURAL RESOURCES, 99AG23542

Plaintiff,

vs.

CLIFFORD YENTES,

Defendant.

Law No. 64523

CONSENT ORDER, JUDGMENT
AND DECREE

94 OCT 20 PM 1:44
FILED
CLERK DISTRICT COURT
POTTAWATTAMIE COUNTY
IOWA

NOW on this 20th day of October, 1994, the Court is presented with the Plaintiff's Petition at Law seeking civil penalties and injunctive relief pursuant to Iowa Code § 455B.307. The Court having read the petition and being otherwise advised by the parties FINDS:

1. The Court has jurisdiction of the parties and the subject matter of this action and the undersigned parties consent to the entry of this Consent Order, Judgment and Decree.

2. Defendant Clifford Yentes admits, only as between these parties and to achieve this settlement, the violations alleged in the Petition at Law.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Defendant Clifford Yentes shall pay a civil penalty of five thousand and no/100 dollars (\$5,000.00) for the violations alleged in the Petition at Law. Defendant shall pay five hundred and no/100 dollars (\$500.00) within 10 days of the entry of this Consent Order, Judgment and Decree, and two hundred and no/100 dollars (\$200.00) by the first of each month, commencing November 1, 1994.


M. Winter, T. Benton
X
EXHIBIT A

The defendant shall also pay interest at the annual rate of ten percent (10%) on any unpaid balance. There shall be no interest if defendant makes timely payments. Payments of the civil penalty and any interest shall be made to the Clerk of the Iowa District Court for Pottawattamie County.

2. The Clerk of the Iowa District Court, for Pottawattamie County shall issue and cause to be served upon Defendant Clifford Yentes a permanent writ of injunction without bond enjoining him from further violations of Iowa Code § 455B.307(1), 567 IAC § 101.3 and Administrative Order Nos. 78-LQ-08 and 85-LQ-09.

3. The Court retains jurisdiction of this matter to ensure compliance with the terms of this order.

4. The costs of this action including service fees for the injunction are taxed to Defendant Clifford Yentes in the amount of \$75.00.



JUDGE, Fourth Judicial District of Iowa


IOWA DEPARTMENT OF NATURAL
RESOURCES



LARRY J. WILSON, Director

BONNIE CAMPBELL
Attorney General of Iowa

DAVID R. SHERIDAN
Assistant Attorney General


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Assistant Attorney General
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Tel: (515) 281-5351
FAX: (515) 242-6072
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5516 North 76th Street
Omaha, Nebraska 68134
DEFENDANT


MICHAEL J. WINTER
Historic Seminary Building
541 Sixth Avenue
Council Bluffs, Iowa 51503
Tel: (712) 322-0133
ATTORNEY FOR DEFENDANT

W R I O F I N J U N C T I O N

RECEIVED

1994 NOV 14 AM 9:22

STATE OF IOWA, EX REL, IOWA DEPT.
OF NATURAL RESOURCES, 99AG23542

CASE #64523

SHERIFF'S OFFICE
DOUGLAS CO. NEBR.

VS
CLIFFORD YENTES

Petitioner

IN THE DISTRICT COURT,
POTTAWATTAMIE COUNTY
STATE OF IOWA

Respondent

To: CLIFFORD YENTES, the DEFENDANT.

WHEREAS, STATE OF IOWA, EX REL IOWA DEPT OF NATURAL RESOURCE, the PLAINTIFF, has filed a petition in the District Court of said county, praying, among other things, that you be restrained from doing and performing certain acts hereinafter specified.

AND WHEREAS, the said injunction has been ordered and allowed by the Honorable GLEN M MCGEE, Judge of the District Court, Fourth Judicial District of Iowa, on the filing of bond in the sum of **WITHOUT BOND** Dollars, which has been done.

Now, these are, in the name of the State of Iowa, to command you and each of you, the said CLIFFORD YENTES

To Restrain From:

FURTHER VIOLATIONS OF IOWA CODE SECTION 455B.307(1), 567 IAC SECTION 101.3
AND ADMINISTRATIVE ORDER NOS. 78-LQ-08 AND 85-LQ-09.

And this injunction you will observe under the penalty of the law.

WITNESS my hand and the seal of said District Court, Council Bluffs, in said County and State, this 20TH day of OCTOBER, 1994.

Rudy J. Wear
Clerk of Court/Designee

FILED
94 DEC-9 AM 11:32
GLEN DISTRICT COURT
POTTAWATTAMIE COUNTY
IOWA

AFFIDAVIT FOR SERVICE

STATE OF NEBRASKA)

) SS

COUNTY OF DOUGLAS)

INDEX: 935727

I, THE UNDERSIGNED, BEING FIRST DULY SWORN, ON OATH DEPOSE AND STATE THAT I AM OVER THE AGE OF 18 YEARS, AND A RESIDENT AND A DESIGNATED AGENT OF THE SHERIFF OF DOUGLAS COUNTY, NEBRASKA

RECEIVED THIS WRIT ON NOVEMBER 14, 1994, AND SERVED THE SAME ON NOVEMBER 23, 1994, ON THE WITHIN NAMED, CLIFFORD YENTES BY DELIVERING TO HIM/HER PERSONALLY AT CORNER OF 19TH AND HARNEY STREET IN DOUGLAS COUNTY, NEBRASKA, AT 6:40 A.M., A TRUE AND DULY CERTIFIED COPY OF THIS WRIT WITH ALL THE ENDORSEMENTS THEREON, FILED IN THIS CASE.

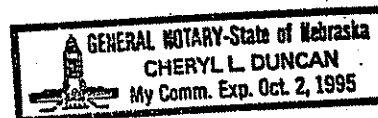

PHILP WOODWARD
DESIGNATED AGENT OF THE SHERIFF

SUBSCRIBED AND SWORN BEFORE ME ON NOVEMBER 23, 1994


GENERAL NOTARY-STATE OF NEBRASKA

FEES \$ 25.00 PAID

TOTAL \$ 25.00 PAID



RECEIVED
CLERK DISTRICT COURT
POTTAWAMIE COUNTY
IOWA

STATE OF IOWA, ex rel., IOWA
DEPARTMENT OF NATURAL
RESOURCES (99AG23542),

VS.

Defendant.

AFFIDAVIT OF MATT RHODES

STATE OF IOWA)
) ss:
COUNTY OF CASS)

3. On November 3, 2006, I inspected the property described in paragraph 2 above in response to a complaint of improper solid waste disposal. In the course of my inspection I

observed solid waste materials consisting of waste tires, appliances, furniture, shingles, insulation, railroad ties and various construction and demolition materials. Following my inspection, I sent Defendant Clifford Yentes a Notice of Violation letter on November 8, 2006, instructing him to remove all visible solid waste materials on the ground surface and dispose of it either at an approved sanitary disposal project or recycling center and submit documentation of such disposal to the DNR Field Office in Atlantic, Iowa, by January 1, 2007. No such documentation has been received from defendant.

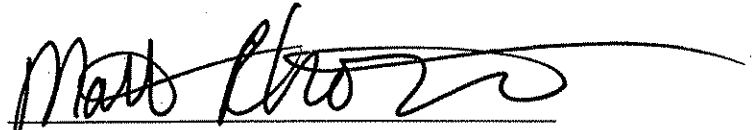
4. On November 16, 2006, I inspected the property described in paragraph 2 above. In the course of my inspection I met with Defendant Clifford Yentes and toured the site, pointing out the DNR's concerns. I asked Mr. Yentes if he receives payment to allow people to dump solid waste on his property and he stated that he has verbal agreements with other parties. During my inspection, a City of Council Bluffs dump truck arrived at the site to unload solid waste.

5. On November 26, 2006, I reinspected the property described in paragraph 2 above and observed that additional solid waste consisting of an old couch and various other furniture items had been disposed of at the site. In addition, it appeared that additional rubble material had been dumped on the property.

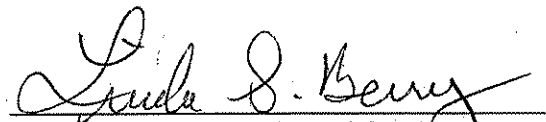
6. To date, defendant has not removed and properly disposed of the solid waste on the property described in paragraph 2 above.

7. To date, defendant has not paid any portion of the \$5,000.00 civil penalty assessed pursuant to the October 20, 1994 Consent Order, Judgment and Decree entered in this matter, or any accrued interest.

Further affiant sayeth not.


MATT RHODES

Subscribed and sworn to before me on this 19 day of September, 2007.


NOTARY PUBLIC in and for the
State of Iowa

5-16-2010